



[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC-2015-0016]

16 CFR Part 1233

Revisions to Safety Standard for Portable Hook-On Chairs

AGENCY: Consumer Product Safety Commission.

ACTION: Direct final rule.

SUMMARY: In March 2016, the U.S. Consumer Product Safety Commission (CPSC) published a consumer product safety standard for portable hook-on chairs based on the ASTM voluntary standard for portable hook-on chairs. ASTM has since published a revised voluntary standard for portable hook-on chairs. We are publishing this direct final rule, revising the CPSC's mandatory standard for portable hook-on chairs to incorporate by reference the more recent version of the applicable ASTM standard.

DATES: The rule is effective on January 15, 2019, unless we receive significant adverse comment by **[insert date 30 days after publication in the FEDERAL REGISTER]**. If we receive timely significant adverse comments, we will publish notification in the *Federal Register*, withdrawing this direct final rule before its effective date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of January 15, 2019.

ADDRESSES: You may submit comments, identified by Docket No. CPSC-2015-0016, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail), except through www.regulations.gov.

Submit written submissions as follows:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions), preferably in five copies, to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to <http://www.regulations.gov>. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

FOR FURTHER INFORMATION CONTACT: Keysha Walker, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: 301-504-6820; email: kwalker@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

1. The Danny Keysar Child Product Safety Notification Act

Section 104(b)(1)(B) of the CPSIA, also known as the Danny Keysar Child Product Safety Notification Act, requires the Commission to promulgate consumer

product safety standards for durable infant or toddler products. The law requires that these standards are to be “substantially the same as” applicable voluntary standards or more stringent than the voluntary standards if the Commission concludes that more stringent requirements would further reduce the risk of injury associated with the product.

The CPSIA also sets forth a process for updating CPSC’s durable infant or toddler standards when the voluntary standard upon which the CPSC standard was based is changed. Section 104(b)(4)(B) of the CPSIA provides that if an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. In addition, the revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless, within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.

2. The CPSC’s Portable Hook-On Chairs Standard

Pursuant to section 104(b)(1) and section 104(c) of the CPSIA, on March 28, 2016, the Commission published a mandatory consumer product safety standard that incorporated by reference ASTM F1235–15, *Standard Consumer Safety Specification for Portable Hook-On Chairs*. (81 FR 17062, Mar. 28, 2016).

3. Notification of Recent Revision

On July 19, 2018, ASTM officially notified the CPSC that it has published ASTM F1235-18, *Standard Consumer Safety Performance Specification for Hook-On Chairs*, a revised 2018 version approved on May 1, 2018. ASTM F1235–18 is the first revision to ASTM F1235 since publication of ASTM F1235–15. The ASTM F1235–18 standard contains performance requirements as described below:

- Requirements for wood parts;
- Requirements for latching and locking mechanisms;
- Requirements to prevent scissoring, shearing, and pinching (including during detachment from table support surface);
- Requirements for covering exposed coil springs;
- Size requirements for openings;
- Warning labeling requirements;
- Requirements for protective components; and
- Marking, labeling, and instructional literature requirements.

As discussed below, the Commission has reviewed the differences between the CPSC standard, 16 CFR part 1233, and ASTM F1235-18.

B. Revision to the ASTM Standard

ASTM F1235–18 contains one safety-related revision underlined below:

6.7.1.1 The passive crotch restraint shall be installed on the product at the time of shipment **in a manner such that it cannot be removed without the use of a tool.**

The ASTM subcommittee made this change to address products with fabric passive crotch restraints that are not permanently attached. The ASTM standard defines a “passive crotch restraint” as a “component that separates the openings for the legs of the occupant into two separate bounded openings and requires no action on the part of the caregiver to use.” The ASTM subcommittee was concerned that a passive crotch restraint that could be removed without tools could easily disengage. Therefore, the subcommittee considered the use of a tool in order to remove a passive crotch restraint to be an appropriate requirement for such a restraint in order to prevent accidental disengagement. We conclude that this change reduces the likelihood that the passive crotch restraint will be removed, thereby improving the safety of portable hook-on chairs.

ASTM also added language, which it intends to add to all of its voluntary standards, stating that ASTM developed the standard in accordance with principles recognized by the World Trade Organization. Adding this text does not affect the safety of portable hook-on chairs. ASTM F1235–18 also includes several non-substantive changes that do not affect safety, such as grammatical changes¹, spacing, and formatting. We determined that each change made in ASTM F1235–18 is either neutral or will improve the safety of the product, and collectively, these changes improve safety.

C. Incorporation by Reference

The Office of the Federal Register (OFR) has regulations concerning incorporation by reference. 1 CFR part 51. Under these regulations, agencies must discuss, in the preamble to the final rule, ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can

¹ *e.g.*, “manufacturers” to “manufacturer’s.”

obtain the materials. In addition, the preamble to the final rule must summarize the material. 16 CFR 51.5(b).

In accordance with the OFR's requirements, section A3 of this preamble summarizes the major provisions of the ASTM F1235-18 standard that the Commission incorporates by reference into 16 CFR part 1233. The standard is reasonably available to interested parties, and interested parties may purchase a copy of the standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <http://www.astm.org/>. A copy of the standard can also be inspected at CPSC's Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923.

D. Certification

Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA, or to a similar rule, ban, standard, or regulation under any other act enforced by the Commission, be certified as complying with all applicable CPSC requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product, or on a reasonable testing program, or, for children's products, on tests on a sufficient number of samples by a third party conformity assessment body accepted by the Commission to test according to the applicable requirements. As noted in the preceding discussion, standards issued under section 104(b)(1)(B) of the CPSIA are "consumer product safety standards." Thus, they are subject to the testing and certification requirements of section 14 of the CPSA.

Because portable hook-on chairs are children's products, samples of these products must be tested by a third party conformity assessment body whose accreditation has been accepted by the Commission. These products also must comply with all other applicable CPSC requirements, such as the lead content requirements in section 101 of the CPSIA, the phthalates prohibitions in section 108 of the CPSIA and 16 CFR part 1307, the tracking label requirement in section 14(a)(5) of the CPSA, and the consumer registration form requirements in the Danny Keysar Child Product Safety Notification Act.

E. Notice of Requirements

In accordance with section 14(a)(3)(B)(iv) of the CPSA, the Commission has previously published a notice of requirements (NOR) for accreditation of third party conformity assessment bodies for portable hook-on chairs (81 FR 17062 (Mar. 28, 2016)). The NOR provided the criteria and process for our acceptance of accreditation of third party conformity assessment bodies for testing portable hook-on chairs to 16 CFR part 1233 (which incorporated ASTM F1235-15). The NOR is listed in the Commission's rule, "Requirements Pertaining to Third Party Conformity Assessment Bodies." 16 CFR part 1112.

As discussed in section B of this document, the revision to 6.7.1.1, concerning the passive crotch restraint, clarifies the existing standard and does not require a new test. The requirement that the passive crotch restraint be attached in a manner requiring tools to remove it can be assessed by visual inspection. Accordingly, there is no change in the way that third party conformity assessment bodies test these products for compliance with the portable hook-on chairs standard. Laboratories would begin testing to the new

standard when ASTM F1235-18 goes into effect, and the existing accreditations that the Commission has accepted for testing to this standard previously would also cover testing to the revised standard. Therefore, the existing NOR for this standard will remain in place, and CPSC-accepted third party conformity assessment bodies are expected to update the scope of the testing laboratories' accreditation to reflect the revised standard in the normal course of renewing their accreditation.

F. Direct Final Rule Process

The Commission is issuing this rule as a direct final rule. Although the Administrative Procedure Act (APA) generally requires notice and comment rulemaking, section 553 of the APA provides an exception when the agency, for good cause, finds that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(B). The Commission concludes that when the Commission updates a reference to an ASTM standard that the Commission has incorporated by reference under section 104(b) of the CPSIA, notice and comment is not necessary.

Under the process set out in section 104(b)(4)(B) of the CPSIA, when ASTM revises a standard that the Commission has previously incorporated by reference as a Commission standard for a durable infant or toddler product under section 104(b)(1)(b) of the CPSIA, that revision will become the new CPSC standard, unless the Commission determines that ASTM's revision does not improve the safety of the product. Thus, unless the Commission makes such a determination, the ASTM revision becomes CPSC's standard by operation of law. The Commission is allowing ASTM F1235-18 to become CPSC's new standard. The purpose of this direct final rule is merely to update

the reference in the Code of Federal Regulations so that it accurately reflects the version of the standard that takes effect by statute. Public comment will not impact the substantive changes to the standard or the effect of the revised standard as a consumer product safety standard under section 104(b) of the CPSIA. Under these circumstances, notice and comment is not necessary. In Recommendation 95-4, the Administrative Conference of the United States (ACUS) endorsed direct final rulemaking as an appropriate procedure to expedite promulgation of rules that are noncontroversial and that are not expected to generate significant adverse comment. *See* 60 FR 43108 (August 18, 1995). ACUS recommended that agencies use the direct final rule process when they act under the “unnecessary” prong of the good cause exemption in 5 U.S.C. 553(b)(B). Consistent with the ACUS recommendation, the Commission is publishing this rule as a direct final rule because we do not expect any significant adverse comments.

Unless we receive a significant adverse comment within 30 days, the rule will become effective on January 15, 2019. In accordance with ACUS’s recommendation, the Commission considers a significant adverse comment to be one where the commenter explains why the rule would be inappropriate, including an assertion challenging the rule’s underlying premise or approach, or a claim that the rule would be ineffective or unacceptable without change.

Should the Commission receive a significant adverse comment, the Commission would withdraw this direct final rule. Depending on the comments and other circumstances, the Commission may then incorporate the adverse comment into a subsequent direct final rule or publish a notice of proposed rulemaking, providing an opportunity for public comment.

G. Effective Date

Under the procedure set forth in section 104(b)(4)(B) of the CPSIA, when a voluntary standard organization revises a standard upon which a consumer product safety standard issued under the Danny Keysar Child Product Safety Notification Act was based, the revision becomes the CPSC standard within 180 days of notification to the Commission, unless the Commission determines that the revision does not improve the safety of the product, or the Commission sets a later date in the *Federal Register*. For the reasons explained below, the Commission is not setting a different effective date.

The Juvenile Products Manufacturers Association (JPMA) typically allows 6 months for products in their certification program to shift to a new voluntary standard once that new voluntary standard is published. Therefore, juvenile product manufacturers are accustomed to adjusting to new voluntary standards within this time frame. ASTM F1235–18 has been approved since May 1, 2018, so by January 15, 2019, manufacturers should already be producing products that meet this standard. Finally, there is only one significant change to the voluntary standard, which the ASTM subcommittee considers a clarification, as further support that manufacturers should already be producing products that meet this standard. Thus, in accordance with this provision, this rule takes effect 180 days after we received notification from ASTM of revisions to these standards. As discussed in the preceding section, this is a direct final rule. Unless we receive a significant adverse comment within 30 days, the rule will become effective on January 15, 2019.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that agencies review proposed and final rules for their potential economic impact on small entities, including small businesses, and prepare regulatory flexibility analyses. 5 U.S.C. 603 and 604. The RFA applies to any rule that is subject to notice and comment procedures under section 553 of the APA. *Id.* As explained above, the Commission has determined that notice and comment is not necessary for this direct final rule. Thus, the RFA does not apply. We also note the limited nature of this document, which updates the incorporation by reference to reflect the mandatory CPSC standard that takes effect under section 104 of the CPSIA.

I. Paperwork Reduction Act

The portable hook-on chairs standard contains information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The revision made no changes to that section of the standard. Thus, the revision will not have any effect on the information collection requirements related to the standard.

J. Preemption

Section 26(a) of the CPSA, 15 U.S.C. 2075(a), provides that where a “consumer product safety standard under [the Consumer Product Safety Act (CPSA)]” is in effect and applies to a product, no state or political subdivision of a state may either establish or continue in effect a requirement dealing with the same risk of injury, unless the state requirement is identical to the federal standard. Section 26(c) of the CPSA also provides that states or political subdivisions of states may apply to the Commission for an exemption from this preemption under certain circumstances.

The Danny Keysar Child Product Safety Notification Act (at section 104(b)(1)(B) of the CPSIA) refers to the rules to be issued under that section as “consumer product safety standards,” thus, implying that the preemptive effect of section 26(a) of the CPSA would apply. Therefore, a rule issued under section 104 of the CPSIA will invoke the preemptive effect of section 26(a) of the CPSA when it becomes effective.

K. Environmental Considerations

The Commission’s regulations provide a categorical exclusion for the Commission’s rules from any requirement to prepare an environmental assessment or an environmental impact statement because they “have little or no potential for affecting the human environment.” 16 CFR 1021.5(c)(2). This rule falls within the categorical exclusion, so no environmental assessment or environmental impact statement is required.

List of Subjects in 16 CFR Part 1233

Consumer protection, Imports, Incorporation by reference, Infants and children, Law enforcement, Safety, Toys.

For the reasons stated above, the Commission amends title 16 CFR chapter II as follows:

PART 1233 – SAFETY STANDARD FOR PORTABLE HOOK-ON CHAIRS

1. The authority citation for part 1233 continues to read as follows:

Authority: Sec. 104, Pub. L. 110-314, 122 Stat. 3016 (August 14, 2008); Sec. 3, Pub. L. 112-28, 125 Stat. 273 (August 12, 2011).

2. Revise § 1233.2 to read as follows:

§ 1233.2 Requirements for portable hook-on chairs.

Each portable hook-on chair must comply with all applicable provisions of ASTM F1235-18, *Standard Consumer Safety Specification for Portable Hook-On Chairs*, approved May 1, 2018. The Director of the Federal Register approves the incorporation by reference listed in this section in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of this ASTM standard from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428-2959 USA; phone: 610-832-9585; <http://www.astm.org/>. You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone 301-504-7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Alberta E Mills, Secretary
U.S. Consumer Product Safety Commission

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